

the shortened response period in the notice;

(B) With the consent of the State savings association; or

(C) When the State savings association already has advised the FDIC that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days of receipt, or such other time period as may be specified by the FDIC, may constitute a waiver of any objections to the capital directive unless the FDIC grants an extension of the time period for good cause.

(4) *Decision.* After the closing date of the State savings association's response period, or upon receipt of the State savings association's response, if earlier, the FDIC shall consider the State savings association's response and may seek additional information or clarification of the response. Thereafter, the FDIC will determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified form.

(5) *Service and effectiveness.* (i) Upon issuance, a capital directive will be served upon the State savings association. It will include or be accompanied by a statement of reasons for its issuance and shall address the responses received during the response period.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the State savings association, unless the FDIC determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the capital directive's purpose. If the State savings association has consented to issuance of the capital directive, it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the FDIC.

(6) *Change in circumstances.* Upon a change in circumstances, a State savings association may submit a request to the FDIC to reconsider the terms of the capital directive or consider changes in the State savings association's capital plan issued under a directive for the State savings association

to achieve its minimum capital requirement. If the FDIC believes such a change is warranted, the FDIC may modify the State savings association's capital requirement or may refuse to make such modification if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the capital directive and capital plan shall continue in full force and effect.

(b) *Relation to other administrative actions.* The FDIC—

(1) May consider a State savings association's progress in adhering to any capital plan required under this section whenever such State savings association or any affiliate of such State savings association seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such State savings association's progress in meeting its minimum capital requirement; and

(2) May disapprove any proposal referred to in paragraph (b)(1) of this section if the FDIC determines that the proposal would adversely affect the ability of the State savings association on a current or pro forma basis to satisfy its capital requirement.

§ 390.465 Components of capital.

(a) *Core Capital.* (1) The following elements,¹ less the amount of any deductions pursuant to paragraph (a)(2) of this section, comprise a State savings association's core capital:

(i) Common stockholders' equity (including retained earnings);

(ii) Noncumulative perpetual preferred stock and related surplus;²

¹Stock issues where the dividend is reset periodically based on current market conditions and the State savings association's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to supplementary capital, regardless of cumulative or noncumulative characteristics.

²Stock issued by subsidiaries that may not be counted by the parent State savings association on the Thrift Financial Report or Consolidated Reports of Condition or Income ("Call Report"), as applicable, likewise shall not be considered in calculating capital. For example, preferred stock issued by a State savings association or a subsidiary that is, in effect, collateralized by assets of the State

(iii) Minority interests in the equity accounts of the subsidiaries that are fully consolidated.

(iv) Nonwithdrawable accounts and pledged deposits of mutual State savings associations (excluding any treasury shares held by the State savings association) meeting the criteria of regulations and memoranda of the FDIC to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods;

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 390.461, are deducted from assets and capital in computing core capital, except as otherwise provided by § 390.471.

(ii) Servicing assets that are not includable in core capital pursuant to § 390.471 are deducted from assets and capital in computing core capital.

(iii) Credit-enhancing interest-only strips that are not includable in core capital under § 390.471 are deducted from assets and capital in computing core capital.

(iv) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the State savings association has a minority ownership interest) are deducted from assets and, thus core capital except as provided in paragraphs (a)(2)(v) and (vi) of this section.

(v) If a State savings association has any investments (both debt and equity) in one or more subsidiaries engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, core capital in accordance with this paragraph (a)(2)(v). The State savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the State savings association as of April 12, 1989. Next the State savings association

savings association or one of its subsidiaries shall not be included in capital. Similarly, common stock with mandatorily redeemable provisions is not includable in core capital.

must deduct from assets and, thus, core capital, the State savings association's investments in and extensions of credit to the subsidiary on the date as of which the State savings association's capital is being determined.

(vi) If a State savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution, the FDIC may, in its sole discretion upon determining that the amount of core capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent State savings association than the amount that would be required if the parent State savings association's investment were deducted pursuant to paragraphs (a)(2)(iv) and (v) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent State savings association in calculating the capital adequacy of the parent State savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 390.461.

(vii) Deferred tax assets that are not includable in core capital pursuant to § 390.471 are deducted from assets and capital in computing core capital.

(b) *Supplementary Capital.* Supplementary capital counts towards a State savings association's total capital up to a maximum of 100% of the State savings association's core capital. The following elements comprise a State savings association's supplementary capital:

(1) *Permanent Capital Instruments.* (i) Cumulative perpetual preferred stock and other perpetual preferred stock³ issued pursuant to regulations and memoranda of the FDIC;

(ii) [Reserved]

³Preferred stock issued by subsidiaries that may not be counted by the parent State savings association on the Thrift Financial Report or Consolidated Reports of Condition or Income ("Call Report"), as applicable, likewise may not be considered in calculating capital. Preferred stock issued by a State savings association or a subsidiary that is, in effect, collateralized by assets of the State savings association or one of its subsidiaries may not be included in capital.

(iii) Nonwithdrawable accounts and pledged deposits (excluding any treasury shares held by the State savings association) meeting the criteria of 12 CFR 390.307 to the extent that such instruments are not included in core capital under paragraph (a) of this section;

(iv) Perpetual subordinated debt issued pursuant to regulations and memoranda of the FDIC; and

(v) Mandatory convertible subordinated debt (capital notes) issued pursuant to regulations and memoranda of the FDIC.

(2) *Maturing Capital Instruments.* (i) Subordinated debt issued pursuant to regulations and memoranda of the FDIC;

(ii) Intermediate-term preferred stock issued pursuant to regulations and memoranda of the FDIC and any related surplus;

(iii) Mandatory convertible subordinated debt (commitment notes) issued pursuant to regulations and memoranda of the FDIC; and

(iv) Mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Office of Thrift Supervision and approved in writing by the FSLIC for inclusion as regulatory capital before or after issuance.

(3) *Transition rules for maturing capital instruments*—A State savings association may include maturing capital instruments issued on or before November 7, 1989, in supplementary capital in accordance with the treatment set forth in paragraph (b)(3)(ii) of this section.

(A) At the beginning of each of the last five years of the life of the maturing capital instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemptions).⁴

(B) Only the aggregate amount of maturing capital instruments that ma-

ture in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 20% of an institution's capital will qualify as supplementary capital.

(C) Once a State savings association selects either paragraph (b)(3)(ii)(A) or (B) of this section for the issuance of a maturing capital instrument, it must continue to elect that option for all subsequent issuances of maturing capital instruments for as long as there is a balance outstanding of such post-November 7, 1989, issuances. Only when such issuances have all been repaid and the State savings association has no balance of such issuances outstanding may the State savings association elect the other option.

(4) *Allowance for loan and lease losses.* Allowance for loan and lease losses established under FDIC regulations and memoranda to a maximum of 1.25 percent of risk-weighted assets.⁵

(5) *Unrealized gains on equity securities.* Up to 45 percent of unrealized gains on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. Unrealized gains are unrealized holding gains, net of unrealized holding losses, before income taxes, calculated as the amount, if any, by which fair value exceeds historical cost. The FDIC may disallow such inclusion in the calculation of supplementary capital if the FDIC determines that the equity securities are not prudently valued.

⁴Capital instruments may be redeemed prior to maturity and without the prior approval of the FDIC, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the FDIC must be notified in writing at least 30 days in advance of such redemption.

⁵The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets. The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of assets required to be deducted under § 390.466 in establishing risk-weighted assets. "Excess reserves for loan and lease losses" is defined as assets required to be deducted from capital under § 390.465(a)(2). A State savings association may deduct excess reserves for loan and lease losses from the gross sum of risk-weighted assets (*i.e.*, risk-weighted assets including allowance for loan and lease losses) in computing the denominator of the risk-based capital standard. Thus, a State savings association will exclude the same amount of excess allowance for loan and lease losses from both the numerator and the denominator of the risk-based capital ratio.

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(c) *Total capital.* (1) A State savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital:

- (i) Reciprocal holdings of depository institution capital instruments; and
- (ii) All equity investments.

§ 390.466 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted assets.* Risk-weighted assets equal risk-weighted on-balance sheet assets (computed under paragraph (a)(1) of this section), plus risk-weighted off-balance sheet activities (computed under paragraph (a)(2) of this section), plus risk-weighted recourse obligations, direct credit substitutes, and certain other positions (computed under paragraph (b) of this section). Assets not included (*i.e.*, deducted from capital) for purposes of calculating capital under § 390.465 are not included in calculating risk-weighted assets.

(1) *On-balance sheet assets.* Except as provided in paragraph (b) of this section, risk-weighted on-balance sheet assets are computed by multiplying the on-balance sheet asset amounts times the appropriate risk-weight categories. The risk-weight categories are:

(i) *Zero percent Risk Weight (Category 1).* (A) Cash, including domestic and foreign currency owned and held in all offices of a State savings association or in transit. Any foreign currency held by a State savings association must be converted into U.S. dollar equivalents;

(B) Securities issued by and other direct claims on the U.S. Government or its agencies (to the extent such securities or claims are unconditionally backed by the full faith and credit of the United States Government) or the central government of an OECD country;

(C) Notes and obligations issued by either the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation and

backed by the full faith and credit of the United States Government;

(D) Deposit reserves at, claims on, and balances due from Federal Reserve Banks;

(E) The book value of paid-in Federal Reserve Bank stock;

(F) That portion of assets that is fully covered against capital loss and/or yield maintenance agreements by the Federal Savings and Loan Insurance Corporation or any successor agency;

(G) That portion of assets directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country;

(H) Claims on, and claims guaranteed by, a qualifying securities firm that are collateralized by cash on deposit in the State savings association or by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country. To be eligible for this risk weight, the State savings association must maintain a positive margin of collateral on the claim on a daily basis, taking into account any change in a State savings association's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.

(ii) *20 percent Risk Weight (Category 2).* (A) Cash items in the process of collection;

(B) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States government or its agencies, or the central government of an OECD country;

(C) That portion of assets conditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country;

(D) Securities (not including equity securities) issued by and other claims on the U.S. Government or its agencies which are not backed by the full faith and credit of the United States Government;

(E) Securities (not including equity securities) issued by, or other direct claims on, United States Government-sponsored agencies;